Entered on Docket
April 19, 2005
GLORIA L. FRANKLIN, CLERK
U.S BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed: April 19, 2005



LESLIE TCHAIKOVSKY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
BARBARA JEWEL MYERS,

No. 03-47038 TG Chapter 13 REF: ASW-118

Debtor.

MEMORANDUM OF DECISION RE MOTION FOR RELIEF

The motion of Select Portfolio Servicing fka Fairbanks Capital Corp. ("Fairbanks") for relief from the automatic stay came before the court for a continued hearing on March 18, 2005 at 11:00 a.m.. The debtor and the Fairbanks both appeared through counsel.

At issue was the moving party's right to attorneys' fees and late charges and how long the debtor should be given to cure post-petition arrearages on her mortgage. The debtor contended that Fairbanks had not adequately informed her of the increase in her mortgage payment due to the debtor's failure to obtain insurance for the collateral property as a result of which Fairbanks was forced to obtain its own insurance. The debtor contended that, due to the lack of notice, she should not have to pay attorneys' fees and late charges. Fairbanks did not object to the debtor's

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being given a reasonable time to cure any other arrearages, not to exceed six months.

At the conclusion of the hearing, the Court ordered counsel for the parties to file post-hearing briefs. The Court indicated that it would then rule without further hearing. Fairbanks filed a declaration to which was attached various documents. Several of the attached documents consist of notices of the intent to obtain force placed insurance. The debtor responded, and Fairbanks filed a reply.

The Court has considered the documents and papers submitted after the hearing. The annual notices of Fairbanks of their intent to obtain force place insurance are not particularly helpful. Although they estimate the annual cost of the insurance and inform the debtor that this will result in a "substantial increase" to the mortgage payment, they do not specify the amount of the increase.

However, among the attachments is an Annual Escrow Account Disclosure Statement dated March 5, 2003, which indicates that a force place insurance cost of \$40 has been accruing each month. This bankruptcy case was filed on December 5, 2003. Therefore, the debtor was put on notice by the time she filed her bankruptcy petition that, in addition to her monthly mortgage payment, her failure to obtain insurance resulted in her owing Fairbanks \$40 a month each month in addition to her regular mortgage payment. She failed to pay Fairbanks this amount. In addition, as noted by Fairbanks, each month the debtor paid Fairbanks only \$504.17

whereas her monthly mortgage payment without regard to the cost of the insurance was \$504.69.

Based on the foregoing, the Court concludes that the debtor was on adequate notice of the cost of the force placed insurance and that Fairbanks was entitled to impose late charges. Because the debtor was delinquent post-petition, Fairbanks was also entitled to charge attorneys' fees assuming it was oversecured. Fairbanks may add the attorneys' fees to its proof of claim. The debtor may object to the fees if she believes that Fairbanks is not oversecured or if the attorneys' fees appear unreasonable in amount. The debtor will be given six months to cure the post-petition arrears, with an equal payment due each month on the first day of the month, late on the 15th, Fairbanks to provide a ten day letter in the event of nonpayment within the grace period.

Counsel for Fairbanks is directed to submit a proposed form of order in accordance with this memorandum.

END OF DOCUMENT

COURT SERVICE LIST

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